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[redacted]

Appellant,

[redacted]

Appellees.

[redacted]

On Appeal From The District Court
Of Appeal Of The State Of Florida, Fifth District

[redacted]

BRIEF FOR APPELLEE
[redacted] APPEALS COMMISSION

[redacted]

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STATEMENT OF THE CASE

The following exception to the Appellant's Statement of the Case is specified in accordance with Supreme Court Rule 34.2.

Hobbie states: "No attempt was ever made by upper management to accommodate Hobbie's new beliefs, despite her immediate supervisor's statement that their arrangement was working without any problem (Tr. at 59, 78, 79)." (Br. at 6). No such finding was made by the hearing officer. (R. 118-19). Moreover, the record contains evidence that Lawton and Company management officials did meet unsuccessfully with Hobbie and her minister in an attempt to solve the problem. (R.67).

SUMMARY OF ARGUMENT

Florida's Unemployment Compensation Law does not single out for disqualification

persons who have adopted new religious beliefs. The disqualification imposed upon Hobbie would have been imposed regardless of whether her refusal to work her assigned schedule was motivated by religious or by secular interests. The Florida statute under attack was promulgated for a secular purpose and is uniformly applied. Its effect on Hobbie's religious beliefs is an incidental effect of a statute that promotes a legitimate public interest. Neither the design of the statute nor its primary effect prohibit religious practices or promote them. The statute is neutral. It does not violate the free exercise clause or the establishment clause of the first amendment.

Sherbert v. Verner and Thomas v. Review Board are not controlling on this case. Sherbert involved a status of ineligibility that would have prevented Sherbert from receiving benefits so long as

she held her religious beliefs. In contrast, the penalty imposed on Hobbie is far less severe because it is temporary in duration. Thomas also is not controlling because it would have been differently decided in Florida. Although this case can be decided on the basis of the factual differences between this case and Sherbert and Thomas, recent reanalysis of the "least restrictive means to accomplish a compelling state interest" test underlying Sherbert and Thomas suggests that those cases should be overturned.

Finally, if Hobbie is granted benefits, the State of Florida will be required to change its statute to provide special treatment to others who are fired for religiously motivated behavior. Enactment of such an exception to favor religious over secular interests would violate the establishment clause of the first amendment, or at the very least

unduly entangle the State of Florida in the business of deciding cases on the basis of whether the claimant's actions were motivated by sincere religious convictions.

ARGUMENT

I. THE SUPREME COURT HAS JURISDICTION UNDER 28 U.S.C. §1257(2).

Jurisdiction under 28 U.S.C. §1257(2) is provided for review of a decision of the highest court of a state where the validity of a state statute is challenged as repugnant to the United States Constitution and the decision is in its favor.

Florida's district courts of appeal are not intermediate appellate courts. England, Jr., Hunter, and Williams, Jr., Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, 32 U. Fla. L. Rev. 147 (1980). An appeal of right may be taken to the Florida Supreme Court only when the district court of appeal has

declared invalid a state statute or a provision of the state constitution. Art. V, §3(b)(1), Fla. Const. The Florida Supreme Court's discretionary jurisdiction to review decisions of district courts of appeal is also severely limited. Only those decisions of the district courts which are certified by the district court of appeal as "worthy" of review or which expressly declare a statute valid or expressly construe a constitutional provision or expressly affect a class of constitutional officers or which expressly conflict with a decision of another district court of appeal are reviewable by the Florida Supreme Court. Art. V, §3(b)(3), Fla. Const. A per curiam decision without written opinion meets none of the criteria for review by the Florida Supreme Court. Thus when a district court of appeal renders a per curiam decision without written opinion, the court acts as the highest

court of the State of Florida. See Williams v. Florida, 399 U.S. 78, 80, n.5 (1970).

The second requirement for jurisdiction under 28 U.S.C. §1257(2), a federal constitutional attack on a state statute, is also satisfied in this case. The issue was raised and argued before the state court. (R.3-57). Finally, the decision of the state court allows the statute to stand, but is silent as to the state court's rationale. Such silence, however, is not fatal to the Court's jurisdiction. See Lawrence v. State Tax Commission, 286 U.S. 276, 282-83 (1932). The Supreme Court has jurisdiction pursuant to 28 U.S.C. §1257(2).

II. THE STATUTE INTENDS NO HOSTILITY TOWARD ANY RELIGION OR RELIGION IN GENERAL, IS NEUTRAL AND UNIFORM IN ITS APPLICATION, AND IS A REASONABLE MEANS TO PROMOTE A LEGITIMATE PUBLIC INTEREST. IT DOES NOT VIOLATE THE FIRST AMENDMENT.

A. Sherbert v. Verner and Thomas v. Review Board Do Not Control the Outcome of this Case.

Florida's Unemployment Compensation Law provides two distinct types of penalties which are imposed in statutorily specified circumstances. The first is for failure to meet the eligibility requirements of the statute. Section 443.091, Florida Statutes (1983), in part provides:

443.091. Benefit eligibility conditions.

(1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(a) He has made a claim for benefits with respect to such week in accordance with such rules as the division may prescribe.

(b) He has registered for work at, and thereafter continued to report at, the division, which shall be responsible for notification of the Florida State Employment Service in accordance with such rules

as the division may prescribe . . . .

(c)

1. He is able to work and is available for work.

(emphasis added).

* * *

Significantly, the ineligibility penalty continues so long as the condition causing the penalty remains in effect. The ineligibility penalty may be considered a status penalty. In contrast, the second type of penalty, disqualification, is imposed for single occurrences. The most common circumstance leading to disqualification is a separation from employment. Section 443.101, Florida Statutes (1983), provides, in part:

443.101. Disqualification for benefits.

An individual shall be disqualified for benefits:

(1) (a) For the week in which he has voluntarily left

his employment without good cause attributable to his employer or in which he has been discharged by his employing unit for misconduct connected with his work, if so found by the division.

1. Disqualification for voluntarily quitting shall continue for the full period of unemployment next ensuing after he has left his work voluntarily without good cause and until such individual has become reemployed and has earned wages equal to or in excess of 17 times his weekly benefit amount; "good cause" as used in this subsection shall include only such cause as is attributable to the employer or which consists of illness or disability of the individual requiring separation from his employment. * * *.

2. Disqualification for being discharged for misconduct connected with his work shall continue for the full period of unemployment next ensuing after having been discharged and until such individual has become reemployed and has

earned wages not less than 17 times his weekly benefit amount and for not more than 52 weeks which immediately follow such week, as determined by the division in each case according to the circumstances in each case or the seriousness of the misconduct, pursuant to rules of the division enacted for determinations of disqualification for benefits for misconduct.

* * *

The disqualification penalty for voluntarily leaving employment without good cause attributable to the employer is the week of leaving and until the individual becomes reemployed and earns 17 times the weekly benefit amount [an amount equal to approximately one-half of the applicant's average weekly wage prior to becoming unemployed. (§443.111(2), Fla. Stat. (1983))]. The penalty for being discharged for misconduct connected with work is the same as for voluntarily leaving employment

except an additional penalty of a specified number of weeks may be added depending on the severity of the offense. §443.101(1)(a)2., Fla. Stat. (1983); Fla. Admin. Code R. 38B-2.17.

When applied to a religion situation, the ineligibility penalty is much more coercive than the disqualification penalty. If a person's religious beliefs make her ineligible for benefits she will forever be ineligible, unless she is willing to forsake her religious beliefs. Such was the case in Sherbert v. Verner, 374 U.S. 398 (1963). Sherbert, a Seventh-Day Adventist, was held ineligible for benefits under South Carolina's unemployment insurance program because she would neither seek nor accept work which conflicted with her Sabbath. Sherbert was determined ineligible for benefits because she was not considered "able to work and . . . available for work." S.C. Code, Tit. 68,

§68-113. Moreover, she would again be held ineligible each time she filed a future claim. In contrast, a fixed disqualification was imposed in Hobbie's case. Once the disqualification is served, Hobbie will be on an equal footing with all other workers, provided she avoids employment that conflicts with her religious beliefs. Obviously the penalty imposed by Florida has a much less coercive effect on Hobbie's religious practices than did South Carolina's statute on Sherbert. As the Court stated in Bowen v. Roy, ___ U.S. ___, 54 U.S.L.W. 4603, 4607 (1986):

> A governmental burden on religious liberty is not inulated from review simply because it is indirect, Thomas v. Review Board, Indiana Employment Security Div., 450 U.S. 707, 717-718 (1981). (citing Sherbert v. Verner, 374 U.S., at 404); but the nature of the burden is relevant to the standard the Government must meet to justify the burden. (emphasis added).

The likelihood that Hobbie will again change her religion while working for an employer who is unable to accommodate the requirements of Hobbie's new religion is so remote that the burden on the State of Florida should be merely to establish that the intent of the statute is completely secular, a fact that Hobbie already concedes. (Br. at 25).

Note 4 of the Court's opinion and the accompanying text in Sherbert suggest that not only was Sherbert held ineligible because she was not available for work, but she was also held disqualified for having refused, without good cause, an offer of suitable work. 374 U.S. at 401-02; S.C. Code, Tit. 68, §68-114(3). Under the applicable Florida statute, Hobbie would have been qualified for benefits because compelling personal reasons, including moral reasons, constitute good cause for refusal of work.

Section 443.101(2), Florida Statutes (1983), in pertinent part provides:

> (a) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals; his physical fitness and prior training; his experience and prior earnings; his length of unemployment and prospects for securing local work in his customary occupation; and the distance of the available work from his residence.
>
> * * *

Oddly enough an almost identical provision appears in the South Carolina statute:

> (b) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals; his physical fitness and prior training; his experience and prior earnings; his length of unemployment and prospects for securing local work in his customary occupation; and the distance of the available work from his residence.
>
> * * *

S.C. Code Tit. 68, §68-114(3). The provision evidently was not followed by the

South Carolina Supreme Court. Sherbert v. Verner, 240 S.C. 286, 125 S.E.2d 737, 743-46 (1962). The failure of the South Carolina Supreme Court to follow the neutral course prescribed by its own statute required the Court to strike the statute as hostile toward religion and, therefore, violative of the free exercise clause.

In contrast, the Florida statute applied to hold Hobbie guilty of misconduct because she refused to work her assigned schedule was applied without regard to Hobbie's religious beliefs. Hobbie demanded a permanent change in her schedule which her employer had never agreed to. When she insisted, the employer asked her to resign. She refused and was fired. Florida's statute defines misconduct connected with work as follows:

> MISCONDUCT. -- "Misconduct" includes, but is not limited to,

> the following, which shall not be construed in pari materia with each other:
>
> (a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; or
>
> (b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

§443.036(24), Fla. Stat. (1983). Since Hobbie refused to work her regularly assigned schedule because of personal reasons and she refused to resign when advised that the employer could not change the schedule, she acted in disregard of her employer's interests. The State of Florida did not single out Hobbie and deny her benefits because of her religious beliefs. Hobbie raised her religious beliefs as a

defense to behavior which otherwise would constitute misconduct. The state rejected Hobbie's defense, because acceptance of it would violate the neutrality of Florida's statute by extending special treatment to Hobbie because of her religious beliefs. It would also require the state to routinely decide in other cases whether individual convictions are religious in nature and sincerely held so as to justify similar special treatment. The prospect of a government body sitting in judgment of religious claims is inimical to the first amendment. Goldman v. Weinberger, ___ U.S. ___, 106 S.Ct. 1310, 1316, n.6 (1986) (STEVENS, J. concurring).

Thomas v. Review Board of Indiana Employment Security, 450 U.S. 707 (1981) also does not control this case. First, if Thomas had arisen in Florida, benefits would have been granted. Thomas's employer unilaterially changed the conditions of

employment. Section 443.101(1), Florida Statutes (1983), provides that "good cause" for quitting employment [which will qualify the individual for benefits] includes that which is "attributable to the employer." Florida decisional law has further defined good cause as follows:

> To voluntarily leave employment for good cause, the cause must be one which would reasonably impel the average able-bodied qualified worker to give up his or her employment.

Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). Vazquez v. GFC Builders Corp., 431 So.2d 739 (Fla. 4th DCA 1983), involved a maintenance man who was told when hired that he would not be required to mow lawns. When he was later told he would have to mow lawns, he demanded a pay increase and was fired when he persisted with his refusal to mow the lawns without the pay increase. He then applied for

unemployment compensation. The court directed payment of benefits on the theory that the employer had violated the terms of Vazquez's employment agreement. See also Beard v. State Department of Commerce, 369 So.2d 382 (Fla. 2d DCA 1979) holding that, unless the employee agreed to work any schedule assigned by the employer, the employee who quits because of a unilateral change in schedule causing a substantial hardship to the employee would be entitled to benefits.

Thomas differs most fundamentally from this case in that Thomas's employer changed the status quo and created the conflict between Thomas's job and his religion. Here it was Hobbie who changed her religious beliefs and demanded that her employer conform to her new beliefs. Failing at that and becoming unemployed, she sought unemployment compensation benefits. Hobbie now seeks special treatment by Florida's

unemployment insurance program to allow payment of benefits.

Hobbie concedes (Br. at 19) that it would be unfair to an employer if an employee accepts employment knowing there is a religious conflict then complains about the conflict. See Hildebrand v. Unemployment Ins. Appeals Bd., 140 Cal. Rptr. 151, 566 P.2d 1297 (1977), cert. denied, 434 U.S. 1068 (1978); Flynn v. Maine Employment Sec. Comm'n., 448 A.2d 905 (Me. 1982), cert. denied, 459 U.S. 1114 (1983); DePriest v. Puett, 669 S.W.2d 669 (Tenn. Ct. App. 1984); DePriest v. Bible, 653 S.W.2d 721 (Tenn. Ct. App. 1980); Levold v. Employment Sec. Dept., 604 P.2d 175 (Wash. Ct. App. 1979). If it is unfair for a person to accept employment knowing there is a religious conflict, it is equally unfair for an employee to adopt religious beliefs that conflict with existing employment and expect to continue

the employment without compromising those beliefs. Such an ultimatum from an employee to an employer is an intentional disregard of the employer's interests and constitutes misconduct connected with work under Florida's statute.

B. The Constitutional Standard Expressed in Sherbert and Thomas Is Not Applicable to this Case.

In Sherbert the Court held that the government must show a "compelling state interest" in order to justify "any incidental burden on the free exercise of . . . religion." 374 U.S. at 403. In Thomas, the Court held that the state must show that any regulation burdening religious conduct is the "least restrictive means" to achieve a valid state objective. 450 U.S. at 718. Thomas quoted with approval Wisconsin v. Yoder, 406 U.S. 205, 215 (1972), that "[t]he essence of all that has been said and written on the subject is

that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion."

Yoder involved the direct conflict between Wisconsin's compulsory school attendance law and the Old Order Amish religion's prohibition of formal school education beyond the eighth grade. The Court observed that the state regulation placed the Amish youth in an atmosphere hostile to their religious beliefs and deprived them of the kind of atmosphere necessary for their religious development. The Court refused to allow such coercion absent a compelling governmental need for the regulation. See also United States v. Seeger, 380 U.S. 163, 185 (1965) (conscientious objection to participation in war); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) (salute and pledge to flag).

In contrast, where a government regulation merely deprives a religiously affiliated institution of a benefit, but does not impede the institution's religious practices, it has been sustained. Bob Jones University v. United States, 461 U.S. 574, 603-04 (1983). Similarly, a Sunday closing law was upheld despite its negative financial impact on Orthodox Jewish merchants forced to close their businesses on Sunday. The merchants were already prohibited by their religious beliefs from working from nightfall each Friday until nightfall each Saturday. The Court stated:

> Fully recognizing that the alternatives open to appellants and others similarly situated--retaining their present occupations and incurring economic disadvantage or engaging in some other commercial activity which does not call for either Saturday or Sunday labor--may well result in some financial sacrifice in order to observe their religious beliefs, still the option is wholly different

> than when the legislation attempts to make a religious practice itself unlawful.

Braunfeld v. Brown, 366 U.S. 599, 605-06 (1961). See also Hamilton v. Regents of the University of California, 293 U.S. 245 (1934). Compare United States v. Seeger, 380 U.S. 163 (1965) with Johnson v. Robison, 415 U.S. 361 (1974).

Bowen v. Roy, ____ U.S. ____, 54 U.S.L.W. 4603 (1986), again demonstrated the inapplicability of Sherbert and Thomas to cases where government regulations unintentionally affect religious practices in an indirect fashion. Roy, a Native American Indian, applied for assistance under the Aid to Families with Dependent Children program and the Food Stamp program. Roy, however, refused to comply with the requirement that participants must furnish the social security numbers of the members of their household as a condition of receiving benefits. Roy and his wife

contended that obtaining a social security account number for their two-year old daughter, Little Bird of the Snow, would violate their Native American religious beliefs. The Court reacknowledged the "distinction between the freedom of individual belief, which is absolute and the freeedom of individual conduct, which is not absolute." 54 U.S.L.W. at 4605; Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940). Refusing to allow Roy to dictate the conduct of the government's internal procedures the Court held that the social security regulation before it might "confront some applicants for benefits with choices, but in no sense does it affirmatively compel [them], by threat or sanctions, to refrain from religiously motivated conduct or to engage in conduct that they find objectionable for religious reasons." 54 U.S.L.W. at 4606. (footnotes omitted).

The Florida statute under review in this case confronts Hobbie with a choice, but it does not force Hobbie to violate her religious beliefs. If Hobbie avoids employment where a religious conflict is present, she will never be forced to choose between unemployment compensation benefits and her religious beliefs. If she chooses to expose herself to such conflicts, she cannot be heard to complain.

> "The First Amendment . . . gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities." Otten v. Baltimore & Ohio R. Co., 205 F.2d 58, 61 (CA2 1953).

Estate of Thornton v. Calder, ____ U.S. ____, 105 S.Ct. 2914, 2918 (1985).

The Court in Bowen v. Roy announced the following test to determine permissable government interference with religion:

> Absent proof of an intent to discriminate against particular religious beliefs or against

> religion in general, the Government meets its burden when it demonstrates that a challenged requirement for governmental benefits, neutral and uniform in its application, is a reasonable means of promoting a legitimate public interest.

54 U.S.L.W. at 4607. The Bowen test protects religious practices from hostile government intrusion, but also recognizes the inevitable minor conflicts between uniformly applied far reaching government programs such as Aid for Families with Dependent Children, Food Stamps, and Unemployment Compensation.

The Florida program meets the Bowen test in that the statute is concededly secular in purpose. It is also applied in a neutral fashion, neither favoring nor penalizing religious interests. Most importantly, the statute promotes a legitimate public interest. As stated by the Florida Legislature:

> **Declaration of public policy. --**

* * *

> Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life.

* * *

> The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, subject however, to the specific provisions of this chapter.

§443.021, Fla. Stat. (1983).

Hobbie protests that her actions should not be considered "fault" or "misconduct." She overlooks that those

terms are used in the limited sense of the statute in which they appear. "Fault" as used in Section 443.021, Florida Statutes (1983), and "misconduct" as used in Section 443.101(1)(a)2., Florida Statutes (1983), are limited in application to the employment relationship. Chapter 443, Florida Statutes, is the state unemployment compensation law. It is not a part of the state penal code. Hobbie's "fault" and "misconduct" consist simply of her pursuit of a course of conduct inconsistent with her continued employment. Those actions caused Hobbie to forfeit unemployment compensation during the period of unemployment that followed her separation from Lawton Jewelers.

Finally, the standard expressed in Sherbert and Thomas has no application to this case because those cases "exhibit hostility, not neutrality [toward] religion." Bowen, 54 U.S.L.W. at 4608.

The lack of neutrality in Sherbert and Thomas has been further described as follows:

> In both of those cases changes in work requirements dictated by the employer forced the employees to surrender jobs that they would have preferred to retain rather than accept unemployment compensation. In each case the treatment of the religious objection to the new job requirements as though it were tantamount to a physical impairment that made it impossible for the employee to continue to work under changed circumstances could be viewed as a protection against unequal treatment rather than a grant of favored treatment for the members of the religious sect.

United States v. Lee, 455 U.S. 252, 263, n.3 (1982) (STEVENS, J., concurring in judgment). In contrast to Sherbert and Thomas, Hobbie's employer did not force her to surrender her job. Hobbie served an ultimatum on her employer, not vice versa. Notwithstanding Hobbie's efforts to downplay the significance of this difference, it is crucial because it distinguishes the cases.

C. Sherbert, Thomas and the Position Taken by Hobbie in this Case Cannot Be Reconciled with the Establishment Clause.

Hobbie acknowledges (Br. at 25) that the standard to determine the constitutionality of legislation under the establishment clause is the three-part test expressed in Lemon v. Kurtzman, 403 U.S. 602 (1971). First, the statute must have a secular legislative purpose. Second, it must have a primary effect that neither advances nor inhibits religion. Third, the state and its administration must avoid excessive entanglement with religion. Walz v. Tax Commission, 397 U.S. 664 (1970). As presently written and applied the Florida statute meets the Lemon test. In order to accommodate Hobbie, however, a proviso must be added to permit payment of benefits to persons who are fired for refusal to work for religious reasons. As amended to accommodate Hobbie, the statute

would clearly violate the establishment clause as interpreted in Lemon. First, although the overall statute would remain secular, the proviso would serve an obvious religious purpose, accommodation of religious beliefs. Second, the primary effect of the proviso would be the advancement of religion by providing more favorable treatment for persons unemployed for religious reasons than for secular reasons. Finally, the proviso would entangle the state with religious claims because prior to granting the benefits of the proviso the state would have to determine whether the person's belief was "religious" and whether it is sincerely held. See Thomas, 450 U.S. at 725-26 (REHNQUIST, J., dissenting); Sherbert, 374 U.S. at 422 (HARLAN, J., dissenting).

Witters v. Washington Department of Services for the Blind, ____ U.S. ____, 106 S.Ct. 748 (1986), relied upon by

Hobbie, exemplifies a government program with a secular purpose and a neutral primary effect. These factors led the Court to overturn the Washington Supreme Court's denial of assistance under the program to a blind student who sought a tuition grant to study theology at a church affilated school. The Court reasoned that the program might incidentally benefit some religious interests, but as a whole the program was neutral and promoted a valid public purpose. In contrast, Hobbie seeks special treatment to accommodate her religious beliefs.

Walz v. Tax Commission, 397 U.S. 664 (1970), also cited by Hobbie provides no support for Hobbie's position because Walz stands for a position opposite hers. The tax exemption granted to the religious institution in Walz was not provided because the institution was sectarian. It was granted in spite of it. Hobbie states that

she wants to be treated like everyone else (Br. at 24), but she overlooks that employees, as a rule, cannot unilaterally dictate to their employers the terms of employment. Although Hobbie denies that she is requesting special treatment because of her religious beliefs, the facts demonstrate otherwise.

The principal reason for resisting any governmental scheme which provides special treatment for religiously motivated behavior has been expressed as follows:

> It is the overriding interest in keeping the government -- whether it be the legislature or the courts -- out of the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude.

United States v. Lee, 455 U.S. at 263, n.2 (STEVENS, J., concurring in the judgment). See also Committee for Public

Education v. Nyquist, 413 U.S. 756, 792-93 (1973); Abington School District v. Schempp, 374 U.S. 203, 226 (1963).

Goldman v. Weinberger, ____ U.S. ____, 106 S.Ct. 1310 (1986), again raised the question whether a religiously based exception could (or must) be made to a regulation secular in purpose and uniform in application. Goldman, an Orthodox Jew and ordained rabbi, was serving on active duty as a captain in the Air Force when he was ordered to stop wearing a yarmulke while indoors. Air Force regulations prohibit the wearing of headgear indoors, except by armed security police while on official business. Goldman challenged the regulation as violating his first amendment freedom to exercise his religious beliefs. In rejecting Goldman's claim the Court stated:

> The Air Force has drawn the line essentially between religious apparel which is visable and

> that which is not, and we hold that those portions of the regulations challenged here reasonably and evenhandedly regulate dress in the interest of the military's perceived need for uniformity.

106 S.Ct. at 1314. Justification for the Court's holding was further expressed as follows:

> If exceptions to dress code regulations are to be granted . . . inevitably the decisionmaker's evaluation of the character and sincerity of the requestor's faith -- as well as the probable reaction of the majority to the favored treatment of a member of that faith -- will play a critical part in the decision. For the difference between a turban or a dreadlock on the one hand, and a yarmulke on the other, is not merely a difference in "appearance" -- it is also the difference between a Sikh or a Rastafarian, on the one hand, and an Orthodox Jew on the other. The Air Force has no business drawing distinctions between such persons when it is enforcing commands of universal application.

106 S.Ct. at 1316 (footnote omitted). (STEVENS, J., concurring).

In Bowen v. Roy, the Court again rejected a request for a religiously based

exception to a neutral government regulation. The challenged regulation was part of the governmental scheme to provide financial assistance to families with dependent children. The Court refused to grant the exception.

> We are not unmindful of the importance of many government benefits today or of the value of sincerely-held religious beliefs. However, while we do not not believe that no government compulsion is involved, we cannot ignore the reality that denial of such benefits by a uniformly applicable statute neutral on its face is of a wholly different, less intrusive nature than affirmative compulsion or prohibition by threat of penal sanctions, for conduct that has religious implications.

54 U.S.L.W. at 4606. The Court addressed the "entanglement" argument as follows:

> [A] policy decision by a government that it wishes to treat all applicants alike and that it does not wish to become involved in case-by-case inquires into the genuiness of each religious objection to such condition or restrictions is entitled to substantial deference. Moreover, legitimate interests are implicated

> in the need to avoid any appearance of favoring religious over non-religious applicants.

54 U.S.L.W. at 4607.

The Florida statute and the decision below interpreting it demonstrate that the State of Florida does not wish to become involved in case-by-case inquiries into the genuiness of religious conflicts causing unemployment. The only situation where the Florida law recognizes personal convictions, religious or otherwise, as a basis for an employment decision occurs when a person who is claiming benefits is offered employment that conflicts with personal convictions. See §443.101(2), Fla. Stat. In all other situations the state maintains a neutral position. It is neither hostile toward religious beliefs, nor does it provide favored treatment to religiously motivated persons. The Florida statute violates neither religion clause.

CONCLUSION

The religion clauses of the constitution, with equal force, prohibit governmental assistance to religion and governmental interference with religion. The Florida statute under attack in this case does not foster or impede religious interests. It is secular in purpose, neutral in application and exemplifies the desire of the State of Florida to avoid entanglement in religious conflicts.

The decision of the District Court of Appeal of the Fifth District of Florida is not inconsistent with the laws of the United States and should, therefore, be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were mailed to Walter E. Carson, Johns and Carson, 6840 Eastern Avenue, N.W., Washington, D.C. 20012; Frank M. Palmour, Rumberger, Kirk, Caldwell, Cabaniss & Burke, 11 East Pine Street, Orlando, Florida 32802 and to Joseph W. Carvin, Alley and Alley, Chartered, P. O. Box 1427, Tampa, Florida 33601.

/s/ John D. Maher